

# U. S. CONSUMER PRODUCT SAFETY COMMISSION

## Report for Fiscal Year 2006 The Administration of The Freedom of Information Act

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### I. BASIC INFORMATION REGARDING THE REPORT

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- A. Contact for questions about the report: Todd Stevenson, Director, Office of the Secretary, Division of Information Management, Office of Information and Technology Services, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Suite 502, Bethesda, Maryland 20814-4408. Telephone: 301-504-7923, Facsimile: 301-504-0127, Email: [tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov) or [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).
- B. Web address for this report:  
<http://www.cpsc.gov/cpscpub/pubs/reports/foia06.pdf>
- C. A paper copy of the report is available from CPSC Office of the Secretary at the address above.

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### II. HOW TO MAKE A FOIA REQUEST

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- A. All FOIA requests received by the CPSC are processed in headquarters. The address is: Freedom of Information Act Request, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Suite 502, Bethesda, Maryland 20814-4408. Telephone: 301-504-7923, Facsimile: 301-504-0127, Email: [tstevenson@cpsc.gov](mailto:tstevenson@cpsc.gov) or [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov).
- B. Other Reference Information about the Agency: The CPSC's World Wide Web site, [www.cpsc.gov](http://www.cpsc.gov), contains extensive information about the agency's activities, including agency meetings, product recalls and hazards, job vacancies, publications, a calendar of public meetings, other important activities and the Guide to Public Information. The site also includes an interactive feature that allows consumers to report unsafe products and related injuries electronically. CPSC also maintains an electronic mail address: [Info@cpsc.gov](mailto:Info@cpsc.gov). This can be used for inquiries about product recalls or to report potential product hazards. The CPSC's public reference reading room contains numerous agency records, including the materials the CPSC makes available for public inspection and

copying pursuant to the FOIA, 5 U.S.C. §§ 552(a)(2) and (5). The reading room is accessed in Suite 419 at the CPSC's headquarters at 4330 East-West Highway, Bethesda, Maryland 20814-4408. Call the Office of the Secretary for an appointment, 301-504-7923. Reading room records are also available on the CPSC's electronic reading room on CPSC's World Wide Web site, [www.cpsc.gov](http://www.cpsc.gov), in the "Library - FOIA" section.

- C. Response Time Ranges: The CPSC responds within 6 days to most of the FOIA requests that are received. These are simple requests for materials that are frequently requested or where we have anticipated the subject of the requests. More complex requests require additional preparation and processing time. The median time to complete the complex requests is 45 days. Complex requests involve one or more of the following: voluminous records or records which are not easily accessible and have to be collected from several Commission offices; proprietary data; privacy concerns; part of an investigatory file; or review required by section 6(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(b).<sup>1</sup> The Commission reviews all agency records that are responsive to FOIA requests according to the requirements of section 6(b). These notifications and the extensive analyses they require are in addition to procedures routinely conducted pursuant to the FOIA. The process not only involves the staffs of the Offices of the Secretary and the General Counsel, but also frequently involves other technical staff where their expertise is required for an understanding of the materials being processed. The time-consuming reviews and material preparations of FOIA requests involving section 6(b) cause delays in the processing of these requests.
- D. The CPSC generally does not disclose to the public the following types of information:
1. Documents prohibited from disclosure by the CPSA, 15 U.S.C. §§ 2055(a) and (b), which prohibits the release of: trade secrets and confidential commercial or financial information; and information that identifies manufacturers of consumer products, unless the CPSC has taken reasonable steps to assure it is accurate, its release would be fair under the circumstances, and its release is reasonably related to effectuating the purposes of the acts the Commission administers.
  2. Information that identifies injured persons and the persons who treated them, without their consent to disclosure.
  3. Certain inter-agency and intra-agency memoranda containing opinions and recommendations prepared to assist in decision-making.

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<sup>1</sup> On June 9, 1980, the U. S. Supreme Court ruled that section 6(b) of the CPSA applies to FOIA requests, CPSC v. GTE Sylvania, 447 U.S. 102 (1980). Section 6(b) requires that, with certain exceptions, the Commission notify manufacturers or private labelers of consumer products before disclosing information from which their identities can be readily ascertained by the public. Section 6(b) prohibits the disclosure of information earlier than 30 days after notification to identified firms to allow the firms to make claims and comments. Firms must be given 10 days to file suit to enjoin the disclosure if they claim that the information is confidential or inaccurate. Efforts to satisfy the statutory requirements in the CPSA necessarily delay many responses to FOIA requests.

4. Personnel, medical and similar files, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
5. Investigatory records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings, reveal identities of confidential information sources, or would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions.

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### **III. DEFINITIONS OF TERMS AND ACRONYMS USED IN THE REPORT**

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A. Agency-Specific Acronyms or Other Terms.

1. CPSA • the Consumer Product Safety Act . 15 U.S.C. §§ 2051-2084.
2. CPSC or Commission • Consumer Product Safety Commission.
3. Section 6(a) of the CPSA, 15 U.S.C. § 2055(a) • prohibits the disclosure of trade secrets, confidential or proprietary business information or other matters referred to in 18 U.S.C. § 1905 or FOIA Exemption 4; requires notification to submitters of information prior to disclosure of any potential confidential information.
4. Section 6(b) of the CPSA, 15 U.S.C. § 2055(b) • prohibits the disclosure of information from which the identity of a manufacturer or private labeler of a consumer product can be readily ascertained by the public, earlier than 30 days after notification of the manufacturer or private labeler; requires the Commission to take reasonable steps to assure, prior to disclosure, that the information to be disclosed is accurate, that the disclosure is fair in the circumstances and that disclosure is reasonably related to effectuating the purposes of the statutes that the Commission administers; requires the Commission to notify a firm 10 days prior to disclosure of information that the firm claims is inaccurate, but for which the Commission believes it has complied with the requirements of section 6(b)(1).
5. Section 15(b) submissions • Section 15(b) of the CPSA, 15 U.S.C. § 2064(b), requires manufacturers, distributors or retailers of consumer products to notify the Commission of certain hazardous products.

B. Basic Terms expressed in common terminology.

1. FOIA/Privacy Act Request • Freedom of Information Act request. A FOIA request is a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also

treated as FOIA requests. All requests for access to records, regardless of which law is cited by a requester, are included in this report.

2. Initial Request • a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal • a request to a federal agency asking that it review at a higher administrative level an initial full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination, such as a matter pertaining to fees.
4. Processed Request or Appeal • a request or appeal for which an agency has taken a final action on the request or the appeal.
5. Multi-track Processing • a system in which simple requests requiring relatively minimal review are placed in one processing track and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent or compelling need for records may request expedited processing.
6. Expedited Processing • an agency will process a FOIA request on a expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.
7. Simple Request • a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume or simplicity of records requested.
8. Complex Request • a FOIA request that an agency using multi-track processing places in a slower track based on the volume, availability and complexity of records requested.
9. Granted Request • an agency decision to disclose all records in full in response to a FOIA request.
10. Partially Granted Request • an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.
11. Denial or Full Denial • an agency decision to not release any part of a record or records in response to a FOIA request, because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA exemptions, or for some procedural reason, such as because no record is located in response to a FOIA request.

12. Time Limits • the time period in the FOIA for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a “perfected” FOIA request).
13. Perfected Request • a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 statute • a separate federal statute either requiring that matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matter to be withheld.
15. Median Number • the middle, not the average number.
16. Average Number • the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group.

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#### IV. EXEMPTION 3 STATUTES

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- A. Section 6(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2055(a)(2). Trade secret and other confidential business information. *Mulloy v. Consumer Prod. Safety Comm'n*, No. C-2-85-645, 1985 U.S. Dist. LEXIS 17194, at \*\*2-5 (S.D. Ohio Aug.2, 1985).
- B. Section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1). Information that identifies a particular brand-name of consumer product. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 122 (1980); and *Krugler v. U.S. Consumer Prod. Safety Comm'n*, 1:03-CV-1905-JTC (N.D.GA. June 22, 2004), and *Reliance Elec. Co. v. Consumer Prod. Safety Comm'n*, 924 F.2d 274 (D.C. Cir. 1991)
- C. Section 6(b)(5) of the CPSA, 15 U.S.C. § 2055(b)(5). Information submitted under statutory reporting requirement for certain potentially unsafe consumer products. *Reliance Elec. Co. v. Consumer Prod. Safety Comm'n*, 924 F.2d 274 (D.C. Cir. 1991)
- D. Section 6(e)(1) of the CPSA, 15 U.S.C. § 2055(e)(1). Information submitted under statutory reporting requirement for certain consumer products involved in product liability actions. None
- E. Section 25(c) of the CPSA, 5 U.S.C. § 2074(c). Information that identifies injured persons or those treating injured persons, absent consent. None

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**V. INITIAL FOIA/PA ACCESS REQUESTS**

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A. Numbers of Initial Requests.

1. Number of requests pending at end of fiscal year 2005 • 112
2. Number of requests received during fiscal year 2006 • 4,700
3. Number of requests processed during fiscal year 2006 • 4,728
4. Number of requests pending at end of fiscal year 2006 • 84

B. Disposition of Initial Requests.

1. Number of total grants • 3,753
2. Number of partial grants • 465
3. Number of (full) denials • 92
  - a. Number of times each FOIA exemption used in partial grants and denials (counting each exemption once per request).
    - (1) Exemption 1 • 0
    - (2) Exemption 2 • 0
    - (3) Exemption 3 • 231
    - (4) Exemption 4 • 177
    - (5) Exemption 5 • 323
    - (6) Exemption 6 • 16
    - (7) Exemption 7(A) • 130
    - (8) Exemption 7(B) • 0
    - (9) Exemption 7(C) • 0
    - (10) Exemption 7(D) • 10
    - (11) Exemption 7(E) • 3
    - (12) Exemption 7(F) • 0

	(13)	Exemption 8	•	0
	(14)	Exemption 9	•	0
4.		Other reasons for nondisclosure (total)	•	418
	a.	No records	•	170
	b.	Referrals	•	180
	c.	Request withdrawn	•	26
	d.	Fee-related reason	•	10
	e.	Records not reasonably described	•	0
	f.	Not a proper FOIA request for some other reason	•	0
	g.	Not an agency record	•	0
	h.	Duplicate request	•	32

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## VI. APPEAL OF INITIAL DENIALS OF FOIA/PA REQUESTS

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### A. Numbers of Appeals.

1.	Number of appeals received during fiscal year 2006	•	29
2.	Number of appeals processed during fiscal year 2006	•	29

### B. Disposition of Appeals.

1.	Number completely upheld	•	23
2.	Number partially reversed	•	5
3.	Number completely reversed	•	0
a.	Number of times each FOIA exemption used (counting each exemption once per appeal).		
	(1)	Exemption 1	• 0
	(2)	Exemption 2	• 0
	(3)	Exemption 3	• 19

(4)	Exemption 4	• 8
(5)	Exemption 5	• 18
(6)	Exemption 6	• 2
(7)	Exemption 7(A)	• 11
(8)	Exemption 7(B)	• 0
(9)	Exemption 7(C)	• 0
(10)	Exemption 7(D)	• 1
(11)	Exemption 7(E)	• 0
(12)	Exemption 7(F)	• 0
(13)	Exemption 8	• 0
(14)	Exemption 9	• 0
4.	Other reasons for nondisclosure (total)	• 1
a.	No records	• 0
b.	Referrals	• 0
c.	Request withdrawn	• 1
d.	Fee-related reason	• 0
e.	Records not reasonably described	• 0
f.	Not a proper FOIA request for some other reason	• 0
g.	Not an agency record	• 0
h.	Duplicate request	• 0
i.	Other	• 0



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**VII. COMPLIANCE WITH TIME LIMITS / STATUS OF PENDING REQUESTS**


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## A. Median Processing Time for Requests Processed During Fiscal Year 2006.

## 1. Simple Requests.

- a. Number of requests processed • 4,263
- b. Median number of days to process • 6 days

## 2. Complex Requests.

- a. Number of requests processed • 465
- b. Median number of days to process • 45 days

## 3. Requests Accorded Expedited Processing.

- a. Number of requests processed • 0
- b. Median number of days to process • Not Applicable

## B. Status of Pending Requests (for Each Multiple Track).

- 1. Number of simple requests pending at end of fiscal year 2006 • 34
- 2. Number of complex requests pending at end of fiscal year • 50
- Median number of days that such requests were pending as of that date • 40

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**VIII. COMPARISONS WITH PREVIOUS YEARS**


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## A. Comparison of Numbers of Requests Received •

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
5,441 requests	4,700 Requests	-741 requests	-13.7

## B. Comparison of Numbers of Requests Processed •

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
5,387 requests	4,728 requests	-659 requests	-12.3

C. Comparison of Median Numbers of Days Requests Were Pending as of End of Fiscal Year 2006 •

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
112 requests pending 45 median days	84 requests pending 40 median days	-28 requests -5 median days	-28 -11.2

D. Other Statistics Significant to Agency • Expedited Requests, Numbers of Notifications Under the Consumer Product Safety Act (CPSA) and Other Responses Made to Fulfill FOIA Requests.

1. The number of requests for expedited processing received • 3
2. The number of requests for expedited processing granted • 0
3. Section 6(b)(1) notifications made to manufacturers or private labelers of consumer products to inform them of the proposed disclosure of information that identifies their products and allow them to comment on the disclosure. (Many notices are made at the time the documents are initially filed, before the agency has received an FOIA request.) • 12,378
4. Section 6(b)(2) notifications made to manufacturers or private labelers to inform them 10 days prior to disclosure of information that the firms had claimed was inaccurate or unfair to release, but for which the Commission believes it has complied with the requirements of Section 6(b)(1) and has overruled the comments or claims made by the firm • 278
5. Instances where Section 6(b)(1) applied to requested materials and upon completion of notifications and other requirements of Sections 6(b)(1) and 6(b)(2), the Commission disclosed materials • 1,563
6. Section 6(a)(3) notifications made to submitters of information to the Commission prior to disclosure of any potential confidential information • 261
7. Section 6(a)(5) notifications made to submitters of information 10 days prior to the intended disclosure, where the Commission had overruled any firm claims of proprietary or confidential business information • 123

E. Other Agency Efforts to Improve Timeliness of FOIA Performance and to Make Records Available to the Public • The CPSC has increased its activities to make more available to the public the records of interest, by expanding the placement of records on its World Wide Web site ([www.cpsc.gov](http://www.cpsc.gov)). The CPSC's Web site had 20,319,619 visits and 47,721,284 hits during fiscal year 2006, including 109,316 visits and 111,186 hits to the Library and FOIA Electronic Reading Room. We responded to 1,880 internet inquiries about agency activities. The information sought included records regarding the Commission's regulatory and compliance activities, documents filed in adjudicatory proceedings, Commission

decisions, press releases, safety alerts, publications, the Public Calendar of meetings and briefings, briefing materials on matters before the Commission, advisory opinions of the General Counsel, materials requested under the FOIA by more than one requester, contracting activities, job vacancies, and many other matters.

The Commission continues to maintain materials of interest to the public in a Reading Room in its headquarters location. Few visitors used the Reading Room. The Commission's Office of the Secretary (301)-504-7923 or [cpsc-os@cpsc.gov](mailto:os@cpsc.gov) is available to assist the public in locating information or with preparing an FOIA request for information.

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## IX. COSTS / FOIA STAFFING

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### A. Staffing Levels.

1. Number of full-time FOIA personnel (in total work-years) • 9
2. Number of personnel with part-time or occasional FOIA duties (in total work-years) • 1
3. Total number of personnel (in work years) • 10

### B. Total Costs (Including Staff and All Resources).

1. FOIA processing (including appeals) • \$987,939
2. Litigation-related activities (estimated) • \$23,437
3. Total costs • \$1,011,376
4. Comparison with previous years (including percentage of change) •

#### Staffing – Total Number of Personnel (in work years)

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
11	10	- 1	- 9

#### FOIA Processing (including appeals)

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
\$1,142,756	\$987,939	- \$154,817	- 13.6

## FOIA Litigation-Related Activities (estimated)

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
\$20,000	\$23,437	\$3,437	17.2

## Total FOIA Costs

Fiscal Year 2005	Fiscal Year 2006	Number of Change	Percentage of Change
\$1,162,756	\$1,011,376	- \$151,380	- 13.1

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**X. FEES**


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- A. Total Amount of Fees Collected by Agency for Processing Requests • \$2,440
- B. Percentage of Total Costs • 0.3

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**XI. FOIA REGULATIONS (INCLUDING FEE SCHEDULE)**


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- A. Title 16, Code of Federal Regulations, Part 1015 – Procedures for Disclosure or Production of Information under the FOIA, which includes the fee schedule, is electronically located at:  
<http://www.cpsc.gov/cpscpub/pubs/reports/16cfr1015.pdf> .
- B. Title 16, Code of Federal Regulations, Part 1101 – Information Disclosure under Section 6(b) of the Consumer Product Safety Act is electronically located at:  
<http://www.cpsc.gov/cpscpub/pubs/reports/6b1101.pdf> .

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## **XII. FOI Performance Improvement Plan**

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### **A. Description of supplementation/modification of agency improvement plan**

#### **1. Not Applicable**

### **B. Agency Implementation of its plan**

#### **Areas Selected for Improvement by December 31, 2006**

##### **1. Initial Processing of FOIA Requests – ALL ITEMS HAVE BEEN COMPLETED**

- a. FOIA tracking system - improve tracking and report capabilities.
- b. Designation of Public Liaisons.
- c. Reduce Backlog of FOIA Requests from 145 requests on December 31, 2005, to 90 Requests.
- d. Research and evaluate equipment and software for the scanning and automatic redaction of records.
- e. Upgrade and replace copying machines for the ITIM.

##### **2. Processing of Office of Compliance Corrective Action or CPSA Section 15 Files –**

- a. Office of Compliance file database index - enhance the search items to include a field for FOIA request numbers where a file has been previously processed for a FOIA request to eliminate duplication of search.

**New programming of the search functions of the Office of Compliance file database is being prepared. Changes to the search function should be implemented before December 2007.**

- b. Ensure staff is trained to ensure that consumers understand privacy issues involved in the release of information regarding identity to the public.

**Training is ongoing of FOIA request processors and investigative staff on the release of identities in agency records.**

**3. CPSC Website – [www.cpsc.gov](http://www.cpsc.gov) – FOIA Information  
ALL ITEMS HAVE BEEN COMPLETED**

- a. Improve the “Make a FOIA Request form and application.”
- b. Add more guidance on what specific and descriptive information is needed from requesters to clarify their FOIA requests.
- c. Establish a FOIA Requester Service Center.

**4. Staff Resources and Training  
ALL ITEMS HAVE BEEN COMPLETED**

- a. Phase One of intra-organizational cross training of staff to reduce backlog.
- b. Reallocate staff resources within EXIT to provide an additional position to perform scanning services for the ITIM.
- c. Provide customer service training for staff.

**5. Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information  
ALL ITEMS HAVE BEEN COMPLETED**

- a. Educate CPSC employees on the disclosure requirements and develop warning and explanation sheets to cover confidential reports.
- b. Remind CPSC employees that requests for public information must be processed through the ITIM-FOI or NIIC offices.

**Anticipated To Be Completed By December 31, 2007**

**1. Initial Processing of FOIA Requests**

- a. Reduce Backlog of FOIA Requests from anticipated 90 requests on December 31, 2006, to 75 Requests.
- b. Train ITIM staff and implement new automated FOIA scanning and redaction system.  
**Training of ITIM has been completed on new scanning equipment and redaction systems.**
- c. Upgrade and replace color printers for the ITIM.
- d. Train NIIC to directly process more FOIA requests.  
**Training of NIIC staff has begun on FOIA request processing and NIIC staff have been responding directly to FOIA requests.**
- e. Create a database of other CPSC organizations' reports.

**2. Processing of Office of Compliance Corrective Action or CPSA Section 15 Files**

- a. Scan files for quicker handling and automated records redaction.
- b. Implement system to electronically send Compliance Update notices to Flammable Fabrics Manufacturers.

**3. CPSC Website – [www.cpsc.gov](http://www.cpsc.gov) – FOIA Information**

- a. Implement a system for the public to easily track their FOIA requests.  
**A new webpage and tracking system with the FOIA Requester Service Center has been added to the website to allow consumers to obtain the status of the request or to contact the FOIA Requester Service Center.**
- b. Develop and implement customer feedback section on FOIA website.  
**FOIA Requester Service Center includes contacts and addresses for customer feedback.**

**4. Staff Resources and Training**

- a. Complete Phase Two of intra-organizational cross training of staff to reduce backlog.
- b. Require all FOIA staff to utilize government-wide FOIA training.

**5. Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information**

- a. Follow-up training for ITIM and NIIC staff to ensure that FOUO reports or those marked with Warning Cover Sheets are properly screened to identify or remove confidential information prior to public disclosure.
- b. Develop more explicit informational cover sheets for confidential reports to clarify reasons for confidentiality.

**Areas Under Consideration for Completion beyond 2007:**

1. Redesign FOIA web page on [www.cpsc.gov](http://www.cpsc.gov).

**C. Identification and discussion of any deficiency in meeting plan milestones**

1. Making changes to a file searching database in the Commission's Office of Compliance and Field Operations has been delayed to arrange the logistics for new programming and permissions to necessary for revisions to the database. It is anticipated that the changes to the entry and search functions should be implemented before December 2007.

**D. Other Executive Order-Related Activities**

1. Not applicable

**E. Descriptions of the FOIA exemptions**

1. The nine exemptions to the FOIA authorize federal agencies to withhold information covering: (1) classified national defense and foreign relations information; (2) internal agency rules and practices; (3) information that is prohibited from disclosure by another federal law; (4) trade secrets and other confidential business information; (5) inter-agency or intra-agency



communications that are protected by legal privileges; (6) information involving matters of personal privacy; (7) records or information compiled for law enforcement purposes, to the extent that the production of those records (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or (F) could reasonably be expected to endanger the life or physical safety of any individual; (8) information relating to the supervision of financial institutions; and (9) geological information on wells.

2. The Commission generally applies the following FOIA exemptions for the withholding of the following types of information:

- a. FOIA exemptions 3 and 4: Documents prohibited from disclosure by the CPSC, 15 U.S.C. §§ 2055(a) and (b), which prohibits the release of: trade secrets and confidential commercial or financial information; and information that identifies manufacturers of consumer products, unless the CPSC has taken reasonable steps to assure it is accurate, its release would be fair under the circumstances, and its release is reasonably related to effectuating the purposes of the acts the Commission administers. Information that identifies injured persons and the persons who treated them, without their consent to disclosure;
- b. FOIA exemption 5: Certain inter-agency and intra-agency memoranda containing opinions and recommendations prepared to assist in decision-making;
- c. FOIA exemption 6: Personnel, medical and similar files, the disclosure of which constitutes a clearly unwarranted invasion of personal privacy.
- d. FOIA exemption 7(A), (D), and (E): Investigatory records compiled for law enforcement purposes when disclosure could reasonably be expected to interfere with enforcement proceedings, reveal identities of confidential information sources, or would disclose techniques, guidelines and procedures for law enforcement investigations or prosecutions.

**F. Additional statistics**

1. Time range of requests pending: July 26, 2004 through January 22, 2007.
2. Time range of consultations pending with other agencies: Not applicable.

**G. Attachment: Agency improvement plan:**

1. The June 14, 2006 FOIA Performance Improvement Plan for the Consumer Product Safety Commission is attached.

## **U.S. Consumer Product Safety Commission Freedom of Information Performance Improvement Plan**

### **A. U.S. Consumer Product Safety Commission (CPSC) Freedom of Information Act (FOIA) Process Overview**

FOIA requests are initially received, reviewed and processed in the Division of Information Management (ITIM), Office of Information and Technology Services (EXIT), formerly the Office of the Secretary. Most requests generally fall into one of four CPSC records categories and are filed accordingly. The categories are: (1) Commission regulation, rulemaking and legal adjudication records maintained in the ITIM (Office of the Secretary); (2) consumer product complaints, reported incidents and investigations of incidents (IDIs) maintained in the CPSC National Injury Information Clearinghouse (NIIC), EXIT; (3) Commission investigatory files (corrective action or recall or Consumer Product Safety Act (CPSA) Section 15 files) from the Office of Compliance; and (4) Commission technical and contractor reports and studies about various health and safety issues.

Once a request is received in ITIM, the FOI Officer, or approved ITIM staff, reviews the request to determine the most efficient method of response and the appropriate assignment based on the level of complexity (multi-tracking process). The distribution for processing requests is as follows: (1) Requests regarding Commission regulation or rulemaking activities is responded to by ITIM (ITIM is the office responsible for maintaining these records); (2) Requests for complaints and injury information are prepared and sent to the NIIC; and, (3) Office of Compliance files are fulfilled by first searching the corrective action database index to determine if the investigation is closed or open/active. Closed files are retrieved from the NIIC, which handles closed and retired cases. Open files are forwarded to the Office of Compliance with processing instructions. (4) Requests for reports from other CPSC organizations are sent with processing instructions to the appropriate office.

In all cases, when the records are obtained, copies are made and filed with the request in ITIM. Requests are then processed in accordance with the Freedom of Information Act, 5 U.S.C. § 552, et seq., the applicable provisions of the Consumer Product Safety Act, 15 U.S.C. § 2051 et seq. and related Commission regulations (16 C.F.R. Parts 1015 and 1101). Requests are processed according to the chronological FOIA request number.

### **B. Areas Selected for Review**

Areas selected for our review are: (1) the overall FOIA Processing system (described in Section A); (2) Processing of requests for the Office of Compliance Corrective Action or CPSA Section 15 files; (3) CPSC Website – [www.cpsc.gov](http://www.cpsc.gov) – FOIA Information; (4) Staff Resources; and, (5) Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information.

## **C. Summary of Reviews**

### **1. Initial Processing of FOIA Requests (See Section A)**

### **2. Processing of Office of Compliance Corrective Action or CPSA Section 15 Files**

Because the bulk of our FOIA processing involves these files we have identified them as an area appropriate for review. Corrective Action or Recall files, CPSA Section 15 files, related violation files, and Field Inspection files, undergo as many as eight reviews prior to the final release to the public. These files generally contain confidential business information and trade secrets and sensitive staff analyses, notes, drafts and internal legal memoranda, IDIs and consumer complaints.

Procedures are in place to ensure that consumer confidentiality requirements are adhered to prior to the release of any of these files. An extensive review is conducted by ITIM FOI Paralegal Specialists, the FOI Officer, the Director, and when necessary, attorneys from the Office of the General Counsel, to remove personal identifying information and other confidential information from Commission documents, notably, IDIs and Consumer Complaints. Consumers are asked to give consent for the release of any personal identifying information provided by them.<sup>1</sup> Where consent is denied, information is excised; otherwise, documents are released intact.

For submitted documents from manufacturers, we provide notice pursuant to sections 6(a) and 6(b) of the CPSA (described below) and await their claims on the records before we excise any information from their documents. If they do not make claims we release the records intact.

- a. After a FOIA request is received for a Compliance file, the file is retrieved for processing, either from retirement, (for older or closed files) or from Compliance if the file is open or active.<sup>2</sup> When the file is obtained from Compliance, the first review is conducted by a Compliance attorney or Compliance Officer who reviews the file and marks any documents deemed not available for public disclosure. This generally includes internal memoranda and legal documents.<sup>3</sup>
- b. ITIM FOI Paralegal Specialists then copy and review the file to remove the documents identified as not for public disclosure in addition to other information such as the identities of consumers requesting the withholding of personal information.

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<sup>1</sup> 15 U.S.C. § 2074(c) prohibits the release of the identity of any injured person or person providing treatment in any Commission accident investigation report without the consent of the identified person.

<sup>2</sup> In some cases involving active investigations, Compliance requests that we withhold the entire file, which we generally withhold applying the FOIA exemptions to disclosure involving internal legal and technical files (FOIA Exemption 5) and active investigations (FOIA Exemption 7(A)).

<sup>3</sup> The FOI Paralegal Specialist makes these calls where the file is retrieved from retirement.

- c. The file is prepared for notification to the manufacturer as required by Consumer Product Safety Act sections 6(a)(3) and 6(b)(1).<sup>4</sup>
- d. The notification letters and identified documents are reviewed by the FOI Officer or the Director before being sent to the manufacturer for comment pursuant to the above-referenced provisions.
- e. After notification by the Commission, if the company makes claims and/or comments on the records, the FOI Specialist processes those claims and makes a determination as to whether the claims are sufficient to withhold the company records in accordance with relevant provisions. The FOI Specialist then prepares a response to the company explaining agreement or disagreement with their claims. If the FOI Specialist determines that a document should be disclosed, the response will, according to the CPSA sections 6(a)(5) and 6(b)(2), provide notification that the Commission intends to disclose the documents at a date not less than 10 days after a firm's receipt of such notification. If further consultation is needed, ITIM may forward the file to the Office of General Counsel for review. A final review is performed by the FOI Officer or the Director prior to this second notification to the company. Prior to the date set for release of the documents, a firm may take the matter to District Court and seek to enjoin the Commission from disclosing the file materials.<sup>5</sup>
- f. If the time period for action by the notified firm has expired, the disclosure letter and release materials are prepared for the final file reviews and signatures by the FOI Specialist, FOI Officer and Director.
- g. An additional review is completed to help ensure that we avoid the unauthorized release of personal information. During the final review of files to be released, a

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<sup>4</sup> Section 6(a)(3) of the CPSA, 15 U.S.C. § 2055(a)(3) provides that "The Commission shall, prior to the disclosure of any information which will permit the public to ascertain readily the identity of a manufacturer or private labeler of a consumer product, offer such manufacturer or private labeler an opportunity to mark such information as confidential and therefore barred from disclosure under paragraph 2." The referenced paragraph 2 of the CPSA, 15 U.S.C. § 2055(a)(2), provides that "all information reported to or otherwise obtained by the Commission under this Act which such information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, or subject to section 552(b)(4) of title 5, shall be considered confidential and shall not be disclosed."

Section 6(b)(1) of the CPSA, 15 U.S.C. § 2055(b)(1), provides that "... not less than 30 days prior to its public disclosure of any information ... the Commission shall notify and provide a summary of the information to each manufacturer or private labeler of any consumer product to which such information pertains ... and shall provide such manufacturer with a reasonable opportunity to submit comments to the Commission in regard to such information. The Commission shall take reasonable steps to assure, prior to its public disclosure thereof that the information ... is accurate, and that such disclosure is fair and reasonably related to effectuating the purposes of [the CPSA]." The Commission has issued interpretative regulations implementing this provision at 16 C.F.R. Part 1101. Exceptions to section 6(b)(1) are specified in section 6(b)(4), 15 U.S.C. § 2055(b)(4). Additional limitations on disclosure of information reported under section 15(b) of the CPSA are established in section 6(b)(5), 15 U.S.C. § 2055(b)(5).

<sup>5</sup> 15 U.S.C. § 2055(a)(6), 15 U.S.C. § 2055(b)(3).

search is conducted specifically for any personal consumer information in all documents contained in the file, including manufacturer submissions. Such information is removed unless we have an authorization or other consent to disclose personal information.

### **3. CPSC Website - [www.cpsc.gov](http://www.cpsc.gov) – FOIA Information**

The CPSC website offers agency information in many forms and formats. From the home page, information is readily available through various links for Press Releases, Publications, Voluntary Standards and Research Reports, Reporting Incidents and other current issues. Tabs are prominently displayed at the top of the page for information of particular interest, including “About the Commission,” “Business, and Library-FOIA.” The Library-FOIA area contains the FOIA Electronic Reading Room and other frequently requested information sources such as Consumer Product-Related Statistics, Peer Review information, Information Quality Guidelines and Requests, and information from the CPSC’s National Electronic Injury Surveillance System (NEISS). The CPSC website had 13,695,650 visitors during fiscal year 2005, including 84,251 visitors to the FOIA Electronic Reading Room.

The Electronic Reading Room – FOIA pages contain the posted CPSC documents listed by fiscal year, Commission General Counsel Advisory Opinions, Summaries of CPSC staff meetings with outside parties, CPSC Federal Register Notices, the link to Make a FOIA Request and information about the CPSC FOIA Requester Service Center and FOIA Public Liaisons to check the status of FOIA requests. The information made readily available on the website goes beyond the requirements of the FOIA.

Section 6(b)(6) of the CPSA, 15 U.S.C. § 2055(b)(6), requires the Commission to establish internal clearance procedures for Commission initiated disclosures of information. The Commission has established such procedures pursuant to CPSC Directive 1450.2, Clearance Procedures for Providing Information to the Public.

In addition to CPSC Directive 1450.2, a written process and policy<sup>6</sup> is in place for approval and clearance of materials to be posted on the website. The policy provides guidance to staff on how to make requests to have documents posted on the website. The approval includes a review by senior level staff and the Commissioners’ Offices.

Affirmative disclosures are a priority with the CPSC. CPSC Technical Reports, briefing materials and other informative records are under constant review for placement on the website in accordance with the above described procedures in anticipation of public records requests and to provide the information for public review.

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<sup>6</sup> The policy is entitled “CPSC Web Document Posting Policy and Procedures.” (An internal CPSC protocol governing the procedures staff must follow to have a document posted on the web site for public access.)

#### **4. Staff Resources**

At the end of fiscal year 2004, the staff resources for processing of FOIA requests were over 15 full time equivalents (FTEs). During fiscal year 2004, 6,397 FOIA requests were processed.

At the end of fiscal year 2005, the FOIA staff resources were 11 FTEs. During fiscal year 2005, 5,387 FOIA requests were processed.

Due to fiscal constraints, we experienced staff reductions. As of March 2006 the staff resources were 8 FTEs. Staff reductions were achieved mostly through attrition and retirement buyouts.

#### **5. Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information**

As authorized by CPSCA section 6(c),<sup>7</sup> the NIIC routinely shares all CPSC IDIs and incident reports with the manufacturers of products identified in the reports. The reports are also provided to the manufacturers for the purpose of making any comments or claims on the information if the information becomes the subject of an FOIA request. Reports are not provided to the manufacturers or made public if they are classified as “For Official Use Only” (FOUO). Two directives provide procedures for handling and distributing materials that must be restricted from the public or classified as FOUO.<sup>8</sup> Any IDI that contains documentation that is subject to any FOUO status should have a FOUO status page covering the document. With IDIs, the FOUO page may also require a warning explaining that the report contains data that is confidential or restricted. Investigators or supervisors also stamp or mark the IDI as CONFIDENTIAL or add a warning on page 1 of the report that explains the reason for the FOUO warning.

For obvious reasons, the sharing of CPSC’s data among CPSC personnel is critical to carrying out our mission. Equally critical is the need to ensure that our laws and policies are followed appropriately and consistently to prevent the disclosure of sensitive or prohibited information to the general public. Public disclosure of documents marked FOUO must always be made through the authority of the ITIM, (Office of the Secretary) or the General Counsel.

Training sessions are conducted to ensure that CPSC employees are aware of our restrictions on the release of documents, especially those with manufacturer, importer and other company identities and other submitted information. ITIM participates in new employee training sessions, including special sessions for field employees. The training

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<sup>7</sup> 15 U.S.C. § 2055(c) provides that “The Commission shall communicate to each manufacturer of a consumer product, insofar as may be practicable, information as to any significant risk of injury associated with such product.”

<sup>8</sup> U.S. CPSC Directives System, Order 0760.1, April 30, 1992 – Information Resources Management – Security Regulations for Information Protection; and U.S. CPSC Directives System, Order 9010.24, July 12, 1995 – In-Depth Investigations Manual – Epidemiology Support Activities.

includes specific discussions of IDIs, Compliance information and other FOUO documents and is designed to impress upon employees the importance of following the requirements of the CPSA before information is disclosed.

The training sessions also covers the use of the warning cover page(s) that accompany sensitive records and are intended to make staff aware of the restricted nature of the documents that will be entrusted to them.

To ensure that particularly sensitive information such as potential "Grand Jury" information or active local or state law enforcement records are protected, cover page warnings should be more explicit. The warnings can (1) contain a clear message that the report cannot be released to the public, (2) be more specific about the reason for the warning and contain a line describing the confidential information, and (3) contain a statement about how to have the report processed for release by ITIM.

## **D. Areas Selected for Improvement**

### **Anticipated To Be Completed By December 31, 2006**

#### **1. Initial Processing of FOIA Requests (See Section A)**

Based upon our review, we have identified the following as potential areas of improvement:

- a. FOIA tracking system - improve tracking and report capabilities.
- b. Designation of Public Liaisons.
- c. Reduce Backlog of FOIA Requests from 145 requests on December 31, 2005, to 90 Requests.
- d. Research and evaluate equipment and software for the scanning and automatic redaction of records.
- e. Upgrade and replace copying machines for the ITIM.

#### **2. Processing of Office of Compliance Corrective Action or CPSA Section 15 Files**

Based upon our review, we have identified the following as potential areas of improvement:

- a. Office of Compliance file database index - enhance the search items to include a field for FOIA request numbers where a file has been previously processed for a FOIA request to eliminate duplication of search.



- b. Ensure staff is trained to ensure that consumers understand privacy issues involved in the release of information regarding identity to the public.

### **3. CPSC Website – [www.cpsc.gov](http://www.cpsc.gov) – FOIA Information**

Based upon our review, we have identified the following as potential areas of improvement:

- a. Improve the “Make a FOIA Request form and application.”
- b. Add more guidance on what specific and descriptive information is needed from requesters to clarify their FOIA requests.
- c. Establish a FOIA Requester Service Center.

### **4. Staff Resources and Training**

Based upon our review, we have identified the following as potential areas of improvement:

- a. Phase One of intra-organizational cross training of staff to reduce backlog.
- b. Reallocate staff resources within EXIT to provide an additional position to perform scanning services for the ITIM.
- c. Provide customer service training for staff.

### **5. Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information**

Based upon our review we have identified the following as potential areas of improvement:

- a. Educate CPSC employees on the disclosure requirements and develop warning and explanation sheets to cover confidential reports.
- b. Remind CPSC employees that requests for public information must be processed through the ITIM-FOI or NIIC offices.

## **Anticipated To Be Completed By December 31, 2007**

### **1. Initial Processing of FOIA Requests (See Section A)**

- a. Reduce Backlog of FOIA Requests from anticipated 90 requests on December 31, 2006, to 75 Requests.

- b. Train ITIM staff and implement new automated FOIA scanning and redaction system.
  - c. Upgrade and replace color printers for the ITIM.
  - d. Train NIIC to directly process more FOIA requests.
  - e. Create a database of other CPSC organizations' reports.
- 2. **Processing of Office of Compliance Corrective Action or CPSA Section 15 Files**
  - a. Scan files for quicker handling and automated records redaction.
  - b. Implement system to electronically sent Compliance Update notices to Flammable Fabrics Manufacturers.
- 3. **CPSC Website – [www.cpsc.gov](http://www.cpsc.gov) – FOIA Information**
  - a. Implement a system for the public to easily track their FOIA requests.
  - b. Develop and implement customer feedback section on FOIA website.
- 4. **Staff Resources and Training**
  - a. Complete Phase Two of intra-organizational cross training of staff to reduce backlog.
  - b. Require all FOIA staff to utilize government-wide FOIA training.
- 5. **Public Release of Investigation Reports (IDIs) with Confidential or Sensitive Attachments or Information**
  - a. Follow-up training for ITIM and NIIC staff to ensure that FOUO reports or those marked with Warning Cover Sheets are properly screened to identify or remove confidential information prior to public disclosure.
  - b. Develop more explicit informational cover sheets for confidential reports to clarify reasons for confidentiality.

**Areas Under Consideration for Completion beyond 2007:**

- 1. Redesign FOIA web page on [www.cpsc.gov](http://www.cpsc.gov) .